

Application No. 09/634,566

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**REMARKS**

In the Official Action mailed 10 February 2004, and made final, the Examiner reviewed claims 1-54. The Examiner rejected claims 1, 8-13 and 20 under 35 USC §102(e); rejected 4-7 and 14-19 under 35 USC §103(a); rejected claims 2 and 3 under 35 USC §103(a); rejected claims 21, 27-31 and 37 under 35 USC §103(a); rejected claims 22-26, 33-36, 38, 40, 43 and 45-54 under 35 USC §103(a); rejected claim 39 under 35 USC §103(a); rejected claims 41 and 44 under 35 USC §103(a); and rejected claim 42 under 35 USC §103(a).

We appreciate the Examiner's time during the telephone interview of 30 March 2004, in which it was agreed that prosecution would be re-opened, and the final status of the 10 February 2004 removed.

Claims 1-54 remain pending. Each of the Examiner's rejections is respectfully traversed below, and reconsideration is requested.

**Rejection of Claims 1, 8-13 and 20 under 35 USC §102(e)**

The Examiner rejected claims 1, 8-13 and 20 under 35 USC §102(e) as anticipated by Walker et al. (U.S. Patent No. 6418415 B1). In view of the agreement to reopen prosecution in the Examiner interview on 30 March 2004, Applicant has amended the claims, without loss of scope, to clarify the statement of the invention. In particular, the preamble of claim 1 has been amended to recite that the service provider manages a "service provider infrastructure," and the claim is further amended to recite that the service to be shared is provisioned "on the service provider infrastructure." Applicant respectfully requests reconsideration.

The Examiner argues that Walker et al. teaches the first act recited in claim 1, of providing an interface on which attributes of a "service to be shared" are identified, in its abstract, and at column 4, lines 27-30, 41-43 and 46-54. However, the cited text in Walker et al. does not describe a "service to be shared with a second party and to be provisioned by the service provider." Walker et al. does disclose a system in which generic "services" may be purchased collectively under its so-called conditional purchase offer management system. However, no services are identified that are "to be shared with a second party and to be provisioned by the service provider." At column 4, lines

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43-44, travel or insurance services are mentioned in the Walker et al. reference as representative of the types of service that might be purchased using the aggregate conditional purchase offer system.

The Examiner argues that

"Walker aggregate number of CPOs for a common service, such as air travel, to allow users to "obtain group discounts and other benefits associated with volume purchases." Thus, Walker clearly teaches that the service a user identifies will be shared with other members of the group."

(At page 2 of the Official Action.)

In the scenario of Walker described by the Examiner, apparently, the service to be shared is airline travel. However, the parties do not share airline travel. Although they might both travel on the same flight, in no sense is the service provided by that airline for the first party shared by the service provided by the airline for the second party. The relationships between airline and the parties are completely separate. The only shared resource described in Walker is the conditional purchase offer. This is that the price that the first and second parties will pay for the service, and presumably some attributes of the service.

Independent claim 1 also includes limitations:

*"offering participation in the particular service to the second party via an interface by which the second party is given an option to cause a signal indicating acceptance of the particular service according to the identified attributes; and  
in response to the signal indicating acceptance by the second party of the particular service, then executing a process to provision the particular service with the identified attributes on the service provider infrastructure for use by the first party and by the second party."*

The just quoted limitations of independent claim 1 do not appear in the reference cited by the Examiner. The Examiner argues that column 13, lines 56-69, and steps 1322, 1324 and 1326 of FIG. 13B, as corresponding to the "offering" step. However, the cited text in

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Walker et al. only describes the manner in which conditional purchase offers are aggregated for the purchase of goods or services. In particular, when an individual makes a conditional purchase offer that does not match the aggregation rules for any pending aggregate CPO, then the service aggregating the CPOs offers participation in the pending aggregate CPO to the individual. In this scenario, the service aggregating CPOs is offering participation in a CPO to a second party, according to attributes defined by the service aggregating the CPOs. In this case, following the airline travel example, the first party (who would use the airline travel service) does not identify attributes of the service to another party who would also use the airline travel service. Rather, it is the service aggregating CPOs that identifies the attributes of the service. Even in the scenario described at column 14, line 31 et seq., where the service aggregating CPOs intends to match a new CPO with another individual CPO, the attributes of the new aggregated CPO for the two parties are set by the service aggregating CPOs by for example averaging the offer price.

In Walker, the first party who seeks airline service travel does not identify attributes of a particular service that are offered to a second party. Rather, it is the service aggregating CPOs that presents an offer to the second party. Thus, the Examiner has improperly shifted his definition of the "first party" from the user of the service, to the service that aggregates CPOs, in an attempt to assemble this "offering" limitation from the Walker reference.

As to the limitation reading "in response to the signal indicating acceptance,..." the Examiner took the position that prior to the amendment herein, that it is not a limitation at all. This position was inconsistent with the position taken in the first official action, and is one basis for the agreement to reopen prosecution. In the first Official Action, the Examiner cited Figure 14B, and column 15, lines 53-65 of Walker et al. as corresponding to the step of "if acceptance by the second party of the particular service is signaled, then executing a process to provision..." However, the aggregate conditional purchase offer system of Walker et al. does not provision a service in response to acceptance by a second party. In the Walker et al. system, a group of parties agree on the terms of a purchase, and submit an aggregated offer to a service provider. The seller of the services in Walker et al. then accepts or rejects the aggregated offer for the group.

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The system of Walker et al. does not address the provisioning of services as required in claim 1. Following the Examiner's airline travel scenario for use of the Walker CPO system, and following the Examiner's interpretation in which the service aggregating CPOs identifies attributes of a service for an offer in the form of a pending aggregate CPO, to the "second party", we point out that the service aggregating CPOs does not participate in the airline travel at all.

In Figure 14B of Walker et al. cited by the Examiner, there is no provisioning of services discussed. Rather, the process ends with sending a confirmation (block 1470) of the purchase to the buyers.

At column 15, lines 53-65, the process described in Walker et al., again, ends at confirmation of the purchase. Thus, Walker et al. provides a system that facilitates aggregated purchase agreements, but not the provisioning of a particular service. The Walker et al. system contemplates a seller with goods or services for sale, and a group of buyers that prepare an aggregate purchase offer. The present invention on the other hand, as recited in Claim 1, provides for first and second parties to define a service that they intend to share, and communicate the attributes of that service to a service provider who is responsible for delivering the service. The claim then requires executing a process to provision a particular service to be shared between the first and second parties, in response to acceptance by the second party. We point out that in the airline travel scenario that we have been discussing, the provisioning of airline travel is carried out in response to acceptance from the service provider, that is the airline in this scenario, rather than in response to "signal indicating acceptance by the second party."

"Provisioning" in the context of the present application takes its ordinary meaning of providing the desired service on the service provider infrastructure, including in some contexts any preparatory steps necessary in establishing the service. In connection with the provisioning of communication services, one example of the provisioning involves the update of software configurations of the platforms used by the parties, that are connected to a metropolitan or wide area network, so that the agreed upon logical connection for data flow between the platforms is actually established across the network.

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The sending of confirmations of agreement by Walker et al. is not "provisioning." The "provisioning" by providing of the goods or services that the purchase agreement relates to is simply not discussed in Walker et al.

Regarding claim 8, the Examiner cites the abstract, and column 4, lines 27-30, 41-43 and 46-59, which are the same portions of Walker et al. as applied to the step of "providing an interface..." in claim 1. However, Walker et al. does not relate to "a particular service to be shared with a second party and to be provisioned by the service provider." Accordingly, Walker et al. does not teach a step required in claim 8 of sending the attributes of the particular service to a service provider.

Claim 9 extends claim 1 to an environment in which the particular service is shared by more than two parties. Claim 9 distinguishes over the Walker et al. reference for at least the same reasons as claim 1.

Likewise, claims 10-13 distinguish over Walker et al. for at least the same reasons as the independent claim 1.

Claim 20 relates to the process by which information is shared between the first and second parties that share the particular service, and that information is used independent of the service provider. One example of this process is described at page 34, lines 9-12, and referred to as an "opaque information pass through mechanism." The Examiner cites the abstract of Walker et al. as teaching this process. However, as mentioned above, there is no discussion in Walker et al. related to services to be shared, nor related to communication among the parties that will be sharing such services.

Accordingly, applicant respectfully requests reconsideration of the rejection of claims 1, 8-13 and 20 in view of the foregoing comments.

Rejection of Claims 4-7 and 14-19 under 35 USC §103(a)

The Examiner rejected claims 4-7 and 14-19 under 35 USC §103(a) as unpatentable over Walker et al. in view of various instances of "Official Notice." Applicant respectfully objects to the Examiner's "Official Notice" as plainly based on hindsight, applying knowledge of the present claims. Applicant points out that claims 4-7 and 14-19 depend from claim 1, and are believed allowable for at least the same reasons as claim 1, regardless of the allegedly well known prior art.

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Furthermore, Applicant requests that the Examiner provide evidence to support the "Official Notice" that can be fairly applied in the context of the present claims. Each of the Examiner's instances of Official Notice is respectfully traversed below.

Regarding claim 4, the Examiner takes "Official Notice " that it would be obvious to extend Walker et al. to the communication services as recited in claim 4. However, the Examiner does not identify any prior art of which official notice is taken, and which he considers to be applicable to claim 4. The Examiner merely concludes that the addition of the limitation in claim 4, that the services to be provisioned according to the process of claim 1 are communication services, would have been obvious. This is illegal reliance on hindsight, without identification of any particular prior art that would support the conclusion. Accordingly, clarification or corroboration of the Examiner's Official Notice is respectfully requested. In particular, what exactly is the Examiner taking official notice of in connection with claim 4?

Furthermore, as discussed above, Walker et al. describes a system facilitating agreements to provide services. It has nothing to do with provisioning of services by a service provider to be shared between parties. The only services mentioned in Walker et al. are airline travel and insurance services. There is no discussion in Walker et al. about how these services might be shared between individuals. The communication services provided by the service provider, as recited in claim 4, are shared by the establishment of the communication channel using communication resources of the service provider from one party to the other. Walker et al. is simply unrelated to the process as recited claim 4.

The Examiner also rejected claim 5, taking "Official Notice that creating a logical instance for the purpose of defining a class is old and well known in the programming art." The Examiner merely recites language from the computer programming arts and takes "official notice." However, the Examiner does not discuss how this can be applied in the context of claim 1 where the logical instance relates to a particular service to be provided by a service provider and shared between the first and second parties. In addition, the Examiner does not identify how this provides a step of claim 5 of "displaying an image prompting a user to create a logical instance of a particular service." Accordingly, clarification or corroboration of the Official Notice relating to claim 5 is respectfully requested.

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With regard to claims 6 and 7, the Examiner states that "creating a logical connection to a data item is old and well-known." The Examiner however does not identify any motivation for applying the steps of claims 6 and 7, which depend from claim 5, in the graphical user interface environment as claimed.

Claim 14 describes the electronic document of claim 13 as one compliant with XML. Claim 14 is allowable for at least the same reasons as its base claims, and because of the unique combination it recites.

Claims 15-19 recite various services to be shared according to the present invention. As argued above, Walker et al. does not describe the services recited in claims 15-19, nor any service that is shared between the parties and provided by a service provider.

Accordingly, the Examiner has not presented a *prima facie* case of unpatentability as to any of claims 4-7 and 14-19, for the reasons discussed above with respect to claim 1, and for the reasons just presented. Therefore, reconsideration of the rejection of such claims is respectfully requested.

#### Rejection of Claims 2 and 3 under 35 USC §103(a)

The Examiner rejected claims 2 and 3 under 35 USC §103(a) as unpatentable over Walker et al. in view of Shing et al. (U.S. Patent No. 5,495,610). As argued above, the Examiner's position that Walker et al. teaches all of the limitations of claim 1 is believed mistaken. Accordingly, claims 2 and 3 are believed allowable for least the same reasons as claim 1.

Furthermore, the Examiner admits that Walker et al. does not teach the steps recited in claim 2 of "establishing a connection between the service provider and the first party...", and "establishing a connection between the service provider and the second party...." The Examiner relies on Shing et al. to teach these limitations.

Shing et al. describes a software distribution system for distributing software programs. However, Shing et al. has nothing to do with the provisioning of particular services to be shared between parties. The Examiner takes the position that the language "to be shared" is precatory and does not provide distinction over Walker and Shing. As discussed above in detail, Applicant submits that the claim clearly distinguishes over

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Walker and Shing in terms of the nature of the transactions taught and in the procedures for provisioning shared services.

The Examiner cites column 7, lines 26-34 of Shing et al. This paragraph in Shing et al. describes attributes of nodes in the software distribution system. Even if these attributes, standing alone, would qualify as an "account" under the claims of the present invention, there is no discussion in Shing et al. nor in Walker et al., of how first and second parties establish a connection with the service provider and an account that relates to delivery of services to be shared, as recited in the present claims.

Claim 3 depends from claim 2 and includes a verifying step. Clearly, there is no structure in Shing et al. nor in Walker et al. that corresponds to the step recited in claim 3.

Accordingly, reconsideration of the rejection of claims 2 and 3 is respectfully requested.

Rejection of Claims 21, 27-31 and 37 under 35 USC §103(a)

The Examiner rejected claims 21, 27-31 and 37 under 35 USC §103(a) as unpatentable over Walker et al. in view of Teng et al. (U.S. Patent No. 6,094,679) (The Examiner mistakenly referred to (U.S. Patent No. 5,495,610) as Teng et al. in this part of the Official Action. The '610 Patent is Shing et al.) Applicant has made clarifying amendments to independent claim 21, without loss of scope. Also, conforming amendments have been made to claims depending from claim 21.

Concerning claim 21, the Examiner relies on Teng et al. to teach a system for distributing software, in which clients request downloads by sending an HTTP formatted request carrying information about the client machine. The Examiner is suggesting that Teng et al. teaches the first step of claim 21, by suggesting that the download server may store information about its client that corresponds with the "parameters of respective service provider accounts." Applicant asserts that the Examiner is mistaken concerning the teaching of Walker et al. and Teng et al. The combination of references applied does not yield the limitations in claim 21, including, as discussed in detail above in connection with respect to claim 1, that the parties interact to share a service that is provisioned by the service provider using the parameters of respective service provider accounts. Teng et al. does not overcome the inadequacy of Walker et al. in this regard, because no



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software described in Teng et al. is shared by the clients, nor does it relate to establishing a shared service provided by the download server nor any other service provider. Rather, Teng et al. is simply about the distribution of generic software that Teng et al. describes as "preferably hardware related software, such as printer driver/configuration files relating to a printer attached to a network server." See, column 3, lines 6-8 of Teng et al.

With regard to claims 27-31, Applicant points out that such claims are similar to claims 8-13 discussed above, and are believed allowable for at least the same reasons, and for the same reasons as their base claim 21.

With regard to claim 37, Applicant points out that claim 37 is similar to claim 20 discussed above, and is believed allowable for at least the same reasons as claim 20, and for the same reasons as its base claim 21.

Accordingly, reconsideration of the rejection of claims 21, 27-31 and 37 is respectfully requested.

Rejection of Claims 22-26, 33-36, 38, 40, 43 and 45-54 under 35 USC §103(a)

The Examiner rejected claims 22-26, 33-36, 38, 40, 43 and 45-54 under 35 USC §103(a) as unpatentable over Walker et al. in view of Teng et al., and Official Notice. Applicant has made clarifying amendments to independent claim 38, without loss of scope. Also, conforming amendments have been made to claims depending from claim 38.

Claims 22-26 of and 33-36 depend from claim 21 which is discussed above. It is submitted that such claims are allowable for at least the same reasons as claim 21, and because of unique features recited in such claims.

Applicant has objected to the "Official Notice" above, and submits that the Examiner's reliance on "Official Notice" is based on hindsight applying knowledge of the present claims. The Examiner does not provide any motivation for application of the allegedly well-known programming techniques of "creating a logical instance" and "prompting a user to create a logical connection" with the subject matter of independent claim 21. Furthermore, Applicant requests that the Examiner provide evidence to support the "Official Notice" that can be fairly applied in the context of the present claims.

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Independent claim 38 recites a method for provisioning communication services offered by a service provider. None of the references applied by the Examiner are similar to independent claim 38. Furthermore, independent claim 38 is similar to the other independent claims 1 and 21 in that it relates to the provisioning of a particular service, and, in the case of claim 38, a particular communication channel, by a service provider where the communication channel is to be shared by first and second parties. The "Official Notice" referred to in connection with claim 4 is not clear, as discussed above, and does not overcome the deficiencies of Walker et al. and Teng et al. The Examiner has not clearly identified what fact is subject of the Official Notice, or how one skilled in the art would be motivated to apply that fact in the context of the present claims.

Claims 40, 43 and 45-54 depend from claim 38, and are believed allowable for at least the same reasons as claim 38. Furthermore, these claims recite features discussed above providing independent reasons for patentability.

Concerning claim 40, the Examiner appears to apply two new separate pieces of allegedly well-known prior art, including "identifying a client, such as by an Internet cookie," "point-to-point, point-to-multipoint and multipoint to multipoint" channels. However, there is no suggestion of applying the process of the present claims to provisioning a shared communication service applying these techniques.

Regarding claim 43, the Examiner argues that because a metropolitan area network is well known, it would be obvious to apply the technique of claim 38 to such a network. Again, this is clear reliance on hindsight. The Examiner has no evidence to support this conclusion.

Likewise, regarding claims 45-52, applicant requests reconsideration of the reliance on Official Notice, for the reason discussed above with respect to claim 5, 6, 14 and so on.

As to claim 54, Applicant disagrees with the Examiner's reading of the Abstract of Walker et al. Walker et al. does not relate to an offering from a first party for use by other parties independent of the service provider, as stated by the Examiner. Rather, Walker et al. relates to aggregation of offers to purchase goods or services. The parties that are independent of the service provider, do not share any services described in Walker et al. Furthermore, claim 20 is about sharing information in the context of

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establishing a shared service, as discussed above in connection with claim 20, and is believed allowable for at least the same reasons as claim 20.

Accordingly, reconsideration of the rejection of claims 22-26, 33-36, 38, 40, 43 and 45-54 is respectfully requested.

Rejection of Claim 39 under 35 USC §103(a)

The Examiner rejected claim 39 under 35 USC §103 (a) as unpatentable over Walker et al. in view of Teng et al., Official Notice and McMillen et al. (US Patent 4,630,258). Claim 39 depends from claim 38, and relates to inventive aspects of configuring a communication channel to be provisioned by the service provider according to the present invention. The Examiner relies on McMillen et al. to teach a communication switch for communications in which various parameters of communication channels are utilized. However, nothing in McMillen et al. relates to the provisioning of services as recited in the present claims. Accordingly, claim 39 is believed to be allowable for at least the same reasons as claim 38, and reconsideration is respectfully requested.

Rejection of Claims 41 and 44 under 35 USC §103(a)

The Examiner rejected claims 41 and 44 under 35 USC §103 (a) as unpatentable over Walker et al. in view of Teng et al., Official Notice and Husak (US Patent 6,157,647). Claims 41 and 44 depend from claim 40 and 43, respectively, and are allowable for at least the same reasons as their respective base claims. The Examiner relies on Husak to teach the use of MAC addresses and the like recited in these claims. However, Husak does not relate to the provisioning of services as required by the present claims, and does not overcome the deficiencies of the other references. Accordingly, reconsideration is respectfully requested.

Rejection of Claim 42 under 35 USC §103(a)

The Examiner rejected claim 42 under 35 USC §103 (a) as unpatentable over Walker et al. in view of Teng et al., Official Notice, McMillen and Husak (US Patent 6,157,647). Claim 42 depends from claim 39, and is allowable for at least the same

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reasons. Furthermore, claim 42 recites the unique feature of applying MAC addresses and VLAN tags according to the process of the present invention. There is no suggestion in the prior art of record leading to claim 42, and reconsideration of the rejection is respectfully requested. Accordingly, reconsideration is respectfully requested.

### CONCLUSION

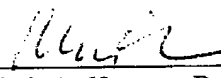
It is submitted that the present application is now in form for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (CMET 1001-2).

Respectfully submitted,

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